

AO 91 (Rev. 5/85) Criminal Complaint

United States District Court

NORTHERN

DISTRICT OF

CALIFORNIA

UNITED STATES OF AMERICA

v.

ERIC JAMES NIEMI

a/k/a SCOTT FALCO

a/k/a ERIK KNIGHT

a/k/a ERIC KNIGHT

(Name and Address of Defendant)

5 01 260

CRIMINAL COMPLAINT

CASE NUMBER:

JUL 20 8 04 AM '01

U.S. DISTRICT COURT
SANTA CLARA COUNTY, CALIF.

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. On or about 12/16/1999 - 7/12/2001 in Santa Clara County county, in the

Northern District of California defendant(s) did, (Track Statutory Language of Offense)

devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and (1) did place in a post office and authorized depository for mail matter, a matter and thing to be sent or delivered by the Postal Service, and deposited and caused to be deposited a matter and thing to be delivered by mail according to the directions thereon, and (2) did transmit and cause to be transmitted by means of wire communication in interstate commerce, writings, signs, signals, pictures and sounds for the purpose of executing such scheme or artifice

in violation of Title 18 United States Code, Section(s) 1341, 1343

I further state that I am a(n) Postal Inspector and that this complaint is based on the following

Official Title

facts:

See attached affidavit.

Maximum Penalties for both violations:

Maximum imprisonment: 5 years

Maximum fine: \$250,000

Maximum supervised release: 3 years

\$100 Special Assessment

Process: No bail arrest warrant requested.

Continued on the attached sheet and made a part hereof:

☒ Yes☐ NoApproved
As To
Form:

AUSA: Scott Frewing

Name/Signature of Complainant:

Gregory Crabb, Postal Inspector

Sworn to before me and subscribed in my presence,

at

San Jose, California

Date

City and State

Patricia V. Trumbull, U.S. Chief Magistrate Judge

Name & Title of Judicial Officer

Signature of Judicial Officer

AFFIDAVIT

I Gregory Crabb, being first duly sworn, depose and state the following:

INTRODUCTION

1. I am submitting this affidavit in support of a criminal complaint and arrest warrant for Eric James Niemi, a/k/a Scott Falco, a/k/a Erik Knight, a/k/a Eric Knight, charging him with violations of Title 18, United States Code, Sections 1341 (mail fraud) and 1343 (wire fraud). I have probable cause to believe that Eric James Niemi did devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and that Niemi did:

- a. place in a post office or authorized depository for mail a matter or thing to be sent or delivered by the Postal Service, namely packages of counterfeit software as further described below, and did knowingly cause money orders and cashiers checks to be delivered by United States mail according to the directions thereon, to the defendant at a U.S. Post Office box as further described below in violation of Title 18, United States Code, Section 1341; and
- b. knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, writings, signs, and signals for the purpose of executing such scheme or artifice as is further described below in violation of Title 18, United States Code, Section 1343.

2. I am a Postal Inspector employed by the United States Postal Inspection Service assigned to the Northern California Division, and have been so employed for over 5 years. I am currently assigned to the Internet Fraud Team. My training and experience includes basic inspector training, computer seizure, basic computer forensics, computer security and Internet fraud investigations. As an U.S. Postal Inspector, I am authorized to investigate crimes involving offenses relating to the U.S. Postal Service.

DESCRIPTION OF SCHEME

3. Based on victim complaints; statements from employees of Adobe Systems, Inc., headquartered in San Jose, California, ("Adobe"); documents from the online auction company eBay Inc. headquartered in San Jose, California ("eBay"); as well as surveillance conducted by myself and other inspectors, I have probable cause to believe that Eric J. Niemi did:

- a. register under different aliases with the online auction company eBay;
- b. offer to sell various Adobe software products at auction on eBay;
- c. fail to disclose the material facts that he either did not have the items he was offering for sale, or that the Adobe software he was offering for sale was counterfeit and was

not as he had described on the auction site;

- d. instruct successful bidders and other customers to mail a cashier's check or money order for the purchase amount, and fraudulently represent that he would send the winning bidders the merchandise they had purchased once he received their payment for the software; and
- e. mail via U.S. Mail recordable compact discs ("CDRs") containing counterfeit copies of Adobe software.

In summary, the investigation has shown that from late 1999 to the present, an individual named Eric J. Neimi, using the aliases "Scott Falco" and "Eric Knight" obtained money by selling counterfeit copies of Adobe software on eBay and directing payment to be sent to a variety of post office boxes.

DETAILS OF INVESTIGATION

4. Based on a referral from Mike Flynn, Manager of Internet Anti-Piracy for the Software & Information Industry Association, I began to assemble background information on an individual using the name Scott Falco and using Post Office Box 251786, Los Angeles, CA, 90025. Mr. Flynn informed me that as of fall 2000, he had received approximately 16 complaints from victims alleging Falco had sold them counterfeit Adobe software. According to these complaints, Falco, using a variety of aliases, offered original, sealed boxes of Adobe software titles such as Photoshop 5.0 via Internet auctions. Upon receipt of payment, Falco either provided CDR copies of the Adobe software with bogus serial numbers or no product at all.

5. On January 9, 2001, Fernando Palma, Adobe Anti-Piracy Investigator informed me of the following:

- a. an individual named Scott Falco, using the address Biz Center, P.O. Box 251281, Los Angeles, CA 90025, was selling counterfeit Adobe software; and
- b. Palma had identified the name of E. J. Niemi, The Film Gate, P.O. Box 10716, Beverly Hills, CA 90213 as another name used by Falco in the scheme. Palma had also identified approximately nine more victims from Falco's auction piracy fraud based on complaints received by Adobe.

6. On or about January 11, 2001, I received the Postal Service Form 1093, Application for Post Office Box, for P.O. Boxes 251786 and 251281, Los Angeles, CA 90025. These forms show the following:

- a. Post Office Box 251281 was opened on April 17, 2000. Upon the form, an individual had identified himself as Eric Niemi, 4685 Roxbury, Beverly Hills, CA 90213. At the time of establishing the post office box, this individual showed California Driver's License Number A7207041. On May 1, 2000, an individual submitted a modification to P.O. Box 251281 enabling an individual named Erik Knight to receive mail at the address. On May 24, 2001, an individual submitted

another modification to P.O. Box 251281 enabling Scott Falco to receive mail at the address.

- b. Post Office Box 251786 was opened on June 2, 2000. Upon the form, an individual identified himself as Scott Falco, 1311 Carmelina, Apt 101, Los Angeles, CA 90025. At the time of establishing the post office box, he provided an Oklahoma Driver's License (Subsequently, on March 9, 2001, I was informed by Lynette Johnson, Inspection Service Operations Technician in the Tulsa, Oklahoma Domicile, that the license was not a valid Oklahoma license).

7. On January 16, 2001, Ken Harris of the Internet Fraud Complaint Center provided me with records relating to auction activities of Erik Knight, P.O. Box 251281, Los Angeles, CA, 90025. Harris informed me the IFCC had received nine complaints issued against Erik Knight for software piracy fraud. These nine complaints alleged that an individual using the name Erik Knight had sold counterfeit Adobe software. Several of these victims were located out of the state of California.

8. On March 1, 2001, Sheree Jones, eBay Fraud Investigator, informed me of auctions conducted using the names Falco, Niemi, and Knight. Jones stated the auctions were associated with at least two credit cards in the name of Diane Renee Ambruso, 1323 S Carmelina Ave #210, Los Angeles, CA 90025. Upon query of eBay's insurance claim system, Ms. Jones identified at least 30 claims totaling at least \$13,000 against the aliases used in the scheme. The credit cards were associated with auctions using the e-mail addresses bizcenter@womenmail.com, buyit@urbanwave.com, jafford@wallstreetcorner.com, netranger@youngbiz.com, cindylocke@altavista.com, and cinema77@throwenheat.com.

9. On March 2, 2001, I reviewed eBay Auction Number 1218326560 for the sale of the full version of Adobe Photoshop 5.0 by an individual using the identity of cinema77@throwenheat.com. In an undercover capacity, on March 2, 2001, I used the identity of dagreene@usa.net to bid on this item for \$180.00. The auction expired on March 3, 2001 at 3:45. My bid in the name dagreene@usa.net was not the highest bid for the item. However, an individual using the cinema77@throwenheat.com address sent an e-mail message to dagreene@usa.net stating the following:

"Congratulations. You had the winning bid on the above item... The previous (2) high bidders thought this was for the MAC! Rather moronic considering it clearly says for the PC machine running windows. In any case.

Please send a U.S. Postal Money Order for the amount of \$186.75 (\$180 plus \$6.75 shipping) made out to Scott Falco and send to:

Scott Falco
P.O. Box 251786
Los Angeles, CA 90025"

10. On March 6, 2001, I purchased U.S. Postal Money Order Number 02792677263 in the

amount of \$186.75 and sent it as requested to Scott Falco at P.O. Box 251786 Los Angeles, CA 90025.

11. Following the mailing of the U.S.-Postal Money Order on March 6, 2001, I received a package addressed to David Greene, postmarked on March 29, 2001, and bearing a return address of "S.F., P.O. Box 251786, LA, CA." The package contained a CDR containing a variety of Adobe software titles and an instruction sheet. Consistent with the consumer complaints, the instruction sheet stated the following in relevant part:

this software is legal with valid serial numbers. It is full version replacement software lost in a Hollywood Studio Fire." The instructions continue ... "The above software is legal, full version software with legal serial numbers. If anyone else or yourself thinks otherwise they are misinformed! Adobe many time gets mad at auction sites because they cut into their retail sales. They have been known to lie blantly in an effort to try to force the customer to go and buy their software through a retail outlet. BY FEDERAL LAW ADOBE HAS TO ALLOW YOU TO REGISTER THIS PRODUCT. If they don't please contact their customer affairs department or tell them to fuck off, don't register it and just use it. Adobe makes great software but their business practices of later are becoming worse than Microsoft when it comes to trying to soak every dollar out of people. Almost forcing them to walk in to a Best Buy, Comp USA or other computer store and take it in the ass for over \$500 a pop. Please enjoy the above software and thank you for your order.

12. Postal Inspector Marius Greenspan informed me that on June 1, 2001, he met with Postal Service Box Clerk, Can Pham. Pham works at the Post Office in West Los Angeles where the individual using the identify Scott Falco had a post office box. Pham was shown the California Driver License photo of Niemi. Pham stated that the individual pictured in the Niemi driver's license was the individual that represented himself as Scott Falco. Pham provided Greenspan a copy of the invalid Oklahoma state drivers license in the name of Scott Falco. The Oklahoma driver's license includes a picture that appears to be the same individual in the California Driver's license in the name of Eric J. Niemi.

13. On June 18, 2001, Regina Johns of Adobe Systems Inc. contacted me regarding recent eBay auction transactions by Erik Knight. Ms. Johns believed that the Erik Knight complaints were related to the investigation relating to the auctions conducted by the individual using the name Scott Falco because the software involved and the accompanying documentation were consistent with the Falco counterfeit Adobe software. On June 20, 2001, I met with Ms. Johns concerning the complaints. The individual using the name Erik Knight used P.O. Box 1076, San Clemente, CA 92672, to receive the proceeds for his auctions of Adobe software.

14. On June 21, 2001, I received P.S. Form 1093, Application for Post Office Box for P.O. Box 1076, San Clemente, CA. The box application was in the name of Erik Knight, 105 Avenida Presido, San Clemente, CA 92672. In opening the box, the individual using the name Erik Knight had presented International Driver's License number CV0251-329 for identification.

15. On July 12, 2001, Inspector Greenspan and I conducted surveillance upon P.O. Box 1076, San Clemente, CA. At approximately 10:00 A.M., an individual appearing to be the same individual in the photo on the Eric Niemi California Driver's license parked a vehicle (California License Plate 2PWF951) in front of the Post Office. The individual exited the vehicle and entered the post office. He removed the mail in P.O. Box 1076, all of which was addressed to Erik Knight. He exited the post office and entered his vehicle. For several minutes, he appeared to open and examine the mail. He subsequently drove in his car to 1323 S. Carmelina Ave #210, Los Angeles, CA. California Department of Motor Vehicle records show this is the address Diane Renee Ambrosso. The vehicle bearing California License Plate 2PWF951 is registered to Eric Niemi.

VICTIM SUMMARY

16. On July 16, 2001, I queried the Postal Inspection Service's Fraud Complaint System and identified the following:

- Nineteen complaints totaling \$ 2,868.56 against Scott Falco, P.O. Box 251786, Los Angeles, CA 90025.
- Ten complaints totaling \$1,120 against Erik Knight, P.O. Box 251786, Los Angeles, CA 90025.
- Two complaints totaling \$440.59 against Eric Niemi, aka Scott Shattuck, P.O. Box 56801, Riverside, CA 92517.
- Two complaints totaling \$343.00 against Scott Falco, P.O. Box 251281, Los Angeles, CA 90025.
- One complaint totaling \$51.00 against Eric J Niemi, The Film Gate, P.O. Box 10716, Beverly Hills, CA 90213.
- Two complaints totaling \$463.35 against Eric Knight, P.O. Box 1076, San Clemente, CA 92674.

17. In addition to Adobe and eBay (to whom the individuals using the names "Scott Falco" and "Erik Knight" owe approximately \$1000 in auction fees), I have identified various victims including at least seven specific individual victims who each received a package containing counterfeit Adobe software in the Northern District of California, including recipients in San Jose, Saratoga, Hayward, Scotts Valley, Castro Valley, Los Gatos and Fremont. In addition, approximately 350 individuals were high bidders on eBay auctions conducted by individuals using the names Scott Falco and Erik Knight on eBay's computers located in San Jose, California. These additional potential victims have not been contacted yet, as I have reason to believe that Niemi may also engage in shill bidding (bidding on his own auctions to increase the high bid), and contacting all bidders on these auctions would risk alerting Niemi to this investigation.

CONCLUSION

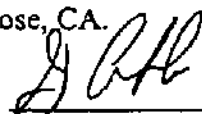
18. Based on the above information, I have probable cause to believe that Eric James Niemi did devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and that Niemi did knowingly deposit and cause to be deposited matter to be delivered by United States mail according to the directions thereon, in violation of Title 18, United States Code, Section 1341, and did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, writings, signs, and signals for the purpose of executing such scheme or artifice in violation of Title 18, United States Code, Section 1343.

REQUEST FOR SEALING

19. Since this investigation is continuing, disclosure of the contents of this affidavit will jeopardize the progress of the investigation. Accordingly I request that the Court issue an order pursuant to which the Complaint and Affidavit be filed under seal under further order of this Court.

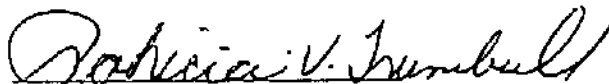
I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 20 day of July 2001, at San Jose, CA.



Gregory Crabb
Postal Inspector, USPS

Sworn and subscribed to before me
this 20 day of July 2001.



PATRICIA V. TRUMBULL
U.S. CHIEF MAGISTRATE JUDGE